

Robert G. Abrams  
 Thomas A. Isaacson  
 Peter A. Barile III  
 HOWREY LLP  
 1299 Pennsylvania Avenue, N.W.  
 Washington, DC 20004  
 Tel.: (202) 783-0800  
 Fax: (202) 383-6610

Paul Alexander  
 HOWREY LLP  
 1950 University Avenue  
 East Palo Alto, CA 94303  
 Tel.: (650) 798-3500  
 Fax: (650) 798-3600

Emily L. Maxwell  
 HOWREY LLP  
 525 Market Street, Suite 3600  
 San Francisco, CA 94105  
 Tel.: (415) 848-4947  
 Fax: (415) 848-4999  
*Lead Class Counsel*

Guido Saveri  
 R. Alexander Saveri  
 Cadio Zirpoli  
 SAVERI & SAVERI, INC.  
 706 Sansome Street  
 San Francisco, CA 94111  
 Tel.: (415) 217-6810  
 Fax: (415) 217-6813  
*Liaison Class Counsel*

Jonathan M. Jacobson  
 Sara Ciarelli Walsh  
 WILSON SONSINI GOODRICH & ROSATI, PC  
 1301 Avenue of the Americas  
 40th Floor  
 New York, NY 10019  
 Tel.: (212) 999-5800  
 Fax: (212) 999-5899  
*Counsel for Defendant Netflix, Inc.*

Neal Manne  
 Richard W. Hess  
 SUSMAN GODFREY L.L.P.  
 1000 Louisiana Street, Suite 5100  
 Houston, Texas 77002  
 Tel: (713) 651-9366  
 Fax: (713) 654-6666  
*Counsel for Defendants Wal-Mart Stores, Inc.  
 and Walmart.com USA LLC*

[Additional counsel on signature page.]

[Additional counsel on signature page.]

**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA**

**IN RE ONLINE DVD RENTAL  
 ANTITRUST LITIGATION**

**Master File No. M:09-CV-2029 PJH**

**MDL No. 2029**

**Hon. Phyllis J. Hamilton**

**This document relates to:  
 ALL ACTIONS**

**STIPULATION AND ~~PROPOSED~~  
 PRETRIAL ORDER NO. 4 REGARDING  
 EXPERT DISCOVERY TO BE  
 FOLLOWED IN MDL No. 2029**

**STIPULATION AND ~~PROPOSED~~ ORDER RE: EXPERT DISCOVERY  
 MDL No. 2029**

960437v1/011148

1 The Plaintiffs and Defendants agree as follows regarding the timing and scope of any expert  
2 discovery in this case, relating to both class certification and the merits, and hereby agree and submit  
3 this stipulation and proposed order:

4 1. Within 7 business days of any party serving any expert reports and/or expert declarations  
5 in this litigation pursuant to Fed. R. Civ. P. 26(a)(2)(B), the party or parties proffering the expert  
6 witness shall produce: the data or other information **relied upon** by the expert in forming the expert's  
7 opinions; any exhibits that will be used to summarize or support the expert's opinions; the witness's  
8 qualifications, including a list of all publications authored in the previous 10 years; a list of all other  
9 cases in which, during the previous four years, the witness has testified as an expert at trial or by  
10 deposition; a statement of the compensation to be paid for the study and testimony in the case. Data  
11 or other information **relied upon** shall include, but is not limited to, underlying data, spreadsheets,  
12 computerized regression analysis and/or other underlying reports and schedules sufficient to  
13 reconstruct the expert's work, calculations, and/or analyses. Information should be produced  
14 electronically (via email or disc) where appropriate. Where documents have previously been  
15 produced as part of the discovery, identification by Bates number is sufficient. As to other  
16 documents relied upon by the expert, documents that are publicly available need not be produced  
17 absent specific request.

18 2. The following types of information shall *not* be subject of any form of discovery:

19 (1) the content of communications among and between: (a) counsel and the expert and/or the  
20 expert's staff and/or supporting firms; (b) counsel and any non-testifying expert consultant and/or  
21 the consultant's staff; (c) the expert and other experts and/or other non-testifying expert consultants;  
22 (d) experts and their staff and/or supporting firms; (e) non-testifying expert consultants and their  
23 staffs; (f) the respective staffs and/or supporting firms of experts or non-testifying expert consultants  
24 and the staffs and/or supporting firms of other experts or non-testifying expert consultants.

25 (2) notes, drafts, written communications or other records of preliminary work created by, or  
26 for, experts or non-testifying expert consultants.  
27  
28

The foregoing exclusions from discovery will not apply to any information, communications or documents upon which the expert *relies* as a basis for his or her opinion.

3. This Stipulation shall be effective only upon agreement of Plaintiffs and Defendants.

Dated: Aug 20, 2009

Respectfully Submitted,

/s/ Robert G. Abrams

Robert G. Abrams  
Thomas A. Isaacson  
Peter A. Barile III  
HOWREY LLP  
1299 Pennsylvania Avenue, N.W.  
Washington, DC 20004  
Tel.: (202) 783-0800  
Fax: (202) 383-6610

Paul Alexander  
HOWREY LLP  
1950 University Avenue  
East Palo Alto, CA 94303  
Tel.: (650) 798-3500  
Fax: (650) 798-3600

Emily L. Maxwell  
HOWREY LLP  
525 Market Street, Suite 3600  
San Francisco, CA 94105  
Tel.: (415) 848-4947  
Fax: (415) 848-4999

***Lead Class Counsel for Plaintiffs and the Proposed Class***

*Who attest in accordance with General Order No. 45 X. B. that concurrence in the filing of the document has been obtained from each of the undersigned counsel:*

Guido Saveri  
R. Alexander Saveri  
Melissa Shapiro  
Cadio Zirpoli  
SAVERI & SAVERI, INC.  
706 Sansome Street  
San Francisco, CA 94111  
Tel.: (415) 217-6810  
Fax: (415) 217-6813

***Liaison Class Counsel for Plaintiffs and the Proposed Class***

Joseph J. Tabacco, Jr.  
Christopher T. Heffelfinger  
Todd A. Seaver  
BERMAN DEVALERIO  
425 California Street, Suite 2100  
San Francisco, CA 94104  
Tel.: (415) 433-3200  
Fax: (415) 433-6382

Manuel J. Dominguez  
Daniel A. Bushell  
BERMAN DEVALERIO  
4280 Professional Center Drive, Suite 350  
Palm Beach Gardens, FL 33410  
Tel: (561) 835-9400  
Fax: (561) 835-0322

Eugene A. Spector  
Jeffrey J. Corrigan  
William G. Caldes  
Theodore M. Lieverman  
Jay S. Cohen  
Jonathan M. Jagher  
SPECTOR ROSEMAN KODROFF & WILLIS, P.C.  
1818 Market Street, Suite 2500  
Philadelphia, PA 19103  
Tel.: (215) 496-0300  
Fax: (215) 496-6611

H. Laddie Montague, Jr.  
Merrill G. Davidoff  
David F. Sorensen  
Peter Kohn  
BERGER & MONTAGUE, P.C.  
1622 Locust Street  
Philadelphia, PA 19103  
Tel.: (215) 875-3010  
Fax: (215) 875-4604

***Members of the Steering Committee for Plaintiffs***

Jonathan M. Jacobson  
Sara Ciarelli Walsh  
WILSON SONSINI GOODRICH & ROSATI, PC  
1301 Avenue of the Americas  
40th Floor  
New York, NY 10019  
Tel.: (212) 999-5800  
Fax: (212) 999-5899

1 Keith E. Eggleton  
2 WILSON SONSINI GOODRICH & ROSATI  
3 650 Page Mill Road  
4 Palo Alto, Ca 94304-1050  
5 Tel: (650) 493-9300  
6 Fax: (650) 565-5100

7 Scott Andrew Sher  
8 WILSON SONSINI GOODRICH & ROSATI  
9 1700 K Street, NW, Fifth Floor  
10 Washington, DC 20006  
11 Tel: (202) 973-8800  
12 Fax: (202) 973-8899

13 ***Counsel for Defendant Netflix, Inc.***

14 Neal Manne  
15 Richard W. Hess  
16 SUSMAN GODFREY L.L.P.  
17 1000 Louisiana Street, Suite 5100  
18 Houston, Texas 77002  
19 Tel: (713) 651-9366  
20 Fax: (713) 654-6666

21 Genevieve Vose  
22 SUSMAN GODFREY L.L.P.  
23 1201 Third Ave., Suite 3800  
24 Seattle, WA 98101-3000  
25 Tel: (206) 516-3836  
26 Fax: (206) 516-3883

27 Kathryn P. Hoek  
28 Stephen E. Morrissey  
Marc M. Seltzer  
SUSMAN GODFREY L.L.P.  
1901 Avenue of the Stars, Suite 950  
Los Angeles, CA 90067-6029  
Tel.: 310-789-3100  
Fax: 310-789-3150

***Counsel for Defendants Wal-Mart Stores, Inc.  
and Wal-Mart.com USA LLC***

~~PROPOSED~~ ORDER

IT IS SO ORDERED.

DATED: August 21, 2009

PHYLLIS J. HAMILTON  
UNITED STATES DISTRICT JUDGE

